

The Appeals Board agrees with Judge Foerschler that claimant was an employee of the respondent when he was injured on January 21, 1998, while working on an apartment construction project. Either respondent or a sister company owned and controlled by brothers Kent and Doug Price furnished claimant's materials, supplies, and equipment, assigned him specific duties to perform on a daily basis, controlled the time he would spend on his lunch breaks and the hours that he would work, and paid him \$15 per hour.

Because of the different companies controlled by the Price brothers, it is difficult to pinpoint which one or more claimant actually worked for. However, claimant testified he understood he was working for Kent Price and Price Brothers Realty Management Company. Even Kent Price is confused regarding which of his companies were working at or on the construction project. He testified that Price Brothers Realty Management Company was not involved in this apartment construction project. But his signed statement, which was introduced by respondent's counsel at the April 1998 preliminary hearing, specifically states that Price Brothers Realty Management Company was involved in that project.

Further, a letter dated April 16, 1998, from Crawford and Company to Columbia Overland Park Regional Medical Center, where claimant was immediately taken after the work-related incident, indicates that Price Brothers Realty had reported the accident for workers compensation purposes.

When considering the entire record, the Appeals Board finds that Judge Foerschler's order should not be modified. Although there is significant evidence that Price Equity Management Company might be the entity who is ultimately found to owe the benefits and who should probably be formally impleaded in this proceeding, that issue can be more fully addressed at a later time. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.<sup>1</sup>

Respondent has requested the Appeals Board to review Judge Foerschler's order of temporary total disability benefits. The Appeals Board's jurisdiction to review preliminary hearing findings is limited to the following issues<sup>2</sup>:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and claim?
- (4) Do certain defenses apply that go to the very basis and compensability of the claim?

The Appeals Board may also review those preliminary hearing orders where the Administrative Law Judge has exceeded his or her jurisdiction and authority.<sup>3</sup> But the

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<sup>1</sup>K.S.A. 1997 Supp. 44-534a(a)(2).

<sup>2</sup>K.S.A. 1997 Supp. 44-534a(a)(2).

<sup>3</sup>K.S.A. 1997 Supp. 44-551.

Board does not have the authority at this juncture of the proceeding to reweigh the evidence to determine whether claimant is temporarily and totally disabled.

Respondent also contends Judge Foerschler erred when he indicated videotapes filmed in July 1998 were irrelevant. Respondent contends the tapes are relevant because they show claimant is not credible.

Although evidentiary rulings made at preliminary hearings are interlocutory in nature and, therefore, not reviewable, the Appeals Board believes respondent is misconstruing Judge Foerschler's statement. Considering the context in which the statement is made, the Appeals Board interprets it to indicate that claimant's activities in July 1998 were not relevant in determining the status of claimant's health several months before. The Judge's statement, however, does not imply that he would not consider them in assessing claimant's credibility.

**WHEREFORE**, the Appeals Board affirms the September 10, 1998 Preliminary Hearing Decision entered by Administrative Law Judge Robert H. Foerschler.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1998.

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BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS  
John David Jurcyk, Lenexa, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director